file

June 19, 1950

Mr. Neil V. Christensen
County Attorney, Coconino County
Flagstaff, Arizona

Dear Neil:

Please accept our apologies for not having responded to your request of April 21 at an earlier date.

In your letter you ask:

(1) "There is a problem in the school system of Coconino County that is quite commonplace and I understand is not peculiar to this County. Most of the schools have what they term revolving or special funds into which are placed receipts from athletic events, class plays, class dues and the like.

It is necessary in a number of instances to pay cash for items, such as meals on trips, hotel rooms and officials' salaries. It has been the custom that these items are paid for out of the special fund and then a voucher is submitted to the County School Superintendent for reimbursement to the special fund. This method is practically the exclusive method by which these matters are taken care of. It is the opinion of my office that this practice is probably not legal, but I am wondering whether or not there is any possibility that through usage may have some sanction."

(2) "Is it possible to invest money which has been accumulated as a result of the 10¢ levy in United States Government Bond."

We are of the opinion, subject to the limitations and qualifications hereinafter noted, that the answer to your first question is that the method of payment of the school expenses outlined is probably legal. We are aware that this method of financing trips by bands, athletic teams and other similar school groups is rather commonly used throughout the state.

The Board of Trustees under Sec. 54-416 2. is given the power to prescribe and enforce rules not inconsistent with law or with those rules prescribed by the State Board of Education. The other powers granted the Board under this section, along with the powers just enumerated, clearly show that the Board of Trustees may prescribe courses and subjects of study within the field allowed by law and within the rules and regulations prescribed by the State Board of Education under 54-101.

We believe that subjects such as athletics and dramatics are proper within the limitations of the law and within the powers of the State Board of Education and the local school boards. This is unquestionably true in the case of athletics, and the Supreme Court has plainly held that expenditures for athletics and matters properly connected therewith are valid public charges. Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056. In this case the Court said:

> " * * * we are of the opinion * * * that competitive athletic games and sports in both intra and inter mural games are legal and laudable methods of imparting such knowledge; * * *"

Since these things are proper subjects upon which instruction may be given, it seems to necessarily follow that the governing body under the authority of Sec. 54-603 can budget public money to pay for the carrying out of this instruction and certainly trips by teams would be incidental to this purpose. Of course, if no money has been budgeted for

these items, they could not be paid for out of public funds; however, we will here assume that money has been set aside and earmarked in the office of the County Treasurer for these items.

The next question that must be determined is whether or not funds derived from athletic or dramatic exhibitions are public funds. We have been wholly unable to find any authority which says that these funds are of a public nature or which says that the governing body must transmit them to the county treasurer. There are innumerable instances of other public boards or agencies being required by statute to turn over to the treasurer all funds received from any source, but we can find no such requirement in the case of the moneys in question; nor can we find any authority which precludes school boards from accepting gifts or moneys from sources other than revenues derived from taxation or other public sources. On the other hand, we can find no prohibition against a school board holding non-public money in trust for a school or the student body of the school. We are, therefore, led to the conclusion that these funds are not public funds but are in the nature of moneys held in trust for the benefit of the school. This seems reasonable in that schools and students would be benefitted.

If the expense items you mention were taken care of as are ordinary school expenses, then the person furnishing the services or accomodations would have to submit a voucher to the county school superintendent and the superintendent would then issue a warrant and the treasurer would pay the same out of the fund in his possession which was budgeted for these items by the governing body of the school under Sec. 54-603. This practice, we realize, would be extremely burdensome and in some cases impossible, and these are undoubtedly the reasons why the procedure just outlined is not followed.

Section 54-606 (c) provides that the county treasurer shall "pay over, on the warrant of the county school superintendent duly endorsed by the person to receive the same, any or all money * * *". It is our opinion that this section will warrant the construction that the principal or coach or other school official who has expended money out of the school trust fund referred to above is the "person entitled" to receive the public money; provided, of course, the expense incurred was for specific items included in the budget. The individual, of course, would receive the same for the benefit of the school trust fund.

As we have heretofore indicated the existence of any one of the following things would make this practice illegal: (1) a determination by a court of this state or the passage of a statute by the legislature that moneys derived from athletic events, etc. are public moneys; (2) the passage of a statute by the legislature requiring the payment or transmittal of these moneys to the county treasurer or (3) failure of the governing body or the Board of Supervisors under Section 54-603 to budget public moneys for expenses incurred in holding dramatic or athletic events; (4) if the expenditures were to further a purpose which was not included within the course of study prescribed by the State Board of Education or the school board or necessarily incidental to such a course.

If for any of these reasons this practice were determined to be not legal we doubt that long or extensive usage would tend to sanction or legalize the same.

We conclude that this practice is legal if the same is carried on as it has been outlined above.

It is our opinion that the answer to Question No. 2 is "No", and that funds acquired by the 10¢ levy may not be used to purchase government bonds. The section authorizing this levy, 54-416, Paragraph 10, provides:

> "The board may include in their annual budget items for the purchase of sites or for erecting or purchasing school buildings, which items the county superintendent shall include in his estimate to the board of supervisors, and the board of supervisors may, in its discretion, make a sufficient levy on the property of said district to produce the amount asked for; provided, that said levy for such purpose shall not exceed ten (10¢) on each one hundred dollars ($100.00) of valuation of such property." (Emphasis supplied)

We believe that funds acquired under this statute should be used in the fiscal year for which the annual budget of the board is set up. Moreover, this section provides for the expenditure of these funds for certain purposes only. When this fund comes into existence it is in the nature of a trust

fund and it seems rather well settled that funds of this nature may be used for the purposes for which they were set up and for no other purpose.

The general rule is contained in 42 Am.Jur., Section 79, page 775:

> " * * * When a special fund is raised for a particular purpose under legislative authority by a special tax or bond issue or the like, or money is appropriated for a specified purpose, it cannot be used for any other purpose either permanently or temporarily until the purpose for which it was intended has been fully accomplished. Generally, moneys raised by taxation and placed in the general account of a municipality are known to be dedicated for particular public uses, and cannot be devoted to any purpose other than that for which they were raised. * * *"

We believe that the rule is properly stated again in 47 Am. Jur., Section 92, page 363:

> " * * * Where the law provides for separate funds for distinct purposes, each fund is earmarked with a trust for the particular purpose for which it is raised, and they cannot be commingled or used interchangeably."

It is also a general rule that public funds may be invested only when there is statutory authority for such investment and only in strict accordance with such statutes. See 42 Am. Jur. 724, Section 10 and 104 A.L.R. 623, cited therein.

We have searched in vain for some authorization to allow investment of these funds. In the absence of such authority, the provisions of 43-4501 ACA 1939 would apply. This section makes a person loaning public money without authority of law guilty of a felony. We believe that investment of such funds is clearly a loan, and that such an investment would not be legal.

For these reasons we are constrained to answer your second question in the negative.

We trust that this opinion will serve to answer your questions satisfactorily.

With kindest regards, we remain

Very truly yours,

FRED O. WILSON
Attorney General

CALVIN H. UDALL
Assistant Attorney General

CHU:mw